

## **2011 DRAFTING REQUEST**

### **Bill**

Received: **04/14/2011**

Received By: **pkahler**

Wanted: **As time permits**

Companion to LRB:

For: **Cory Mason (608) 266-0634**

By/Representing: **Vicky Selkove**

May Contact:

Drafter: **pkahler**

Subject: **Real Estate - condominiums**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mason@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Condominium owners' bill of rights

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 05/05/2011	nmatzke 05/16/2011		_____ _____			
/P1			phenry 05/17/2011	_____ _____	lparisi 05/17/2011		
/P2	pkahler 08/09/2011 pkahler 08/09/2011	jdye 08/24/2011	jfrantze 08/09/2011	_____ _____ _____ _____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			rschluet 08/26/2011	_____ _____	mbarman 08/26/2011	ggodwin 09/06/2011	

FE Sent For:

<END>

None

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/P2	pkahler 08/09/2011 pkahler 08/09/2011	jdye 08/24/2011	jfrantze 08/09/2011	_____ _____ _____			

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/1			rschluet	_____	mbarman		
			08/26/2011	_____	08/26/2011		

FE Sent For:

<END>

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May Contact:

Drafter: pkahler

Subject: Real Estate - condominiums

Addl. Drafters: tkuczens

Extra Copies: TKK

Submit via email: YES

Requester's email: Rep.Mason@legis.wisconsin.gov

Carbon copy (CC:) to:

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/?	pkahler 05/05/2011	nnatzke 05/16/2011					
/P1	P2 8/24 jld	phenry 05/17/2011		lm 8/26	lparisi 05/17/2011		

FE Sent For:

<END>

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Received: **04/14/2011**

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Wanted: **As time permits**

Companion to LRB:

For: **Cory Mason (608) 266-0634**

By/Representing: **Vicky Selkove**

May Contact:

Drafter: **pkahler**

Subject: **Real Estate - condominiums**

Addl. Drafters: **tkuczens**

Extra Copies: **TKK**

Submit via email: **YES**

Requester's email: **Rep.Mason@legis.wisconsin.gov**

Carbon copy (CC:) to:

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No specific pre topic given

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/?	pkahler	/P1 <sup>nwn</sup> 5/13	5/10 ph/A				

FE Sent For:

<END>

## Kahler, Pam

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**From:** Selkove, Vicky  
**Sent:** Thursday, April 14, 2011 11:13 AM  
**To:** Kahler, Pam; Sundberg, Christopher  
**Cc:** Selkove, Vicky  
**Subject:** Rep. Mason Drafting Request - Condo Owners Bill of Rights

**Attachments:** Stonefield Village Memo from Leg Council 9-2-10.pdf

Hi Pam & Chris –

Rep. Mason would like a bill drafted that has to do with condominium law and condo owners' rights. Not sure which of you is the likely drafter for this or if it's someone else. Obviously, feel forward as necessary to the appropriate drafter.

This is a topic we explored last fall with Scott Grosz at Leg Council. I've attached the memo he wrote for us so you see a little of the context of the concerns that have been raised by numerous constituents.

Here's what we'd like the "Condominium Owners' Bill of Rights" Bill to do:

- to be  
contact  
NCSL
1. Modify Wis. Stats. Sec. 703.26(2)(d) to reduce the length of time a declarant may remain in control of an expandable condo. It should be reduced from 10 years to 3 years.
  2. Require condo developers/builders to have an approved set of plans for the development and a written agreement with the local municipality.
  3. Require condo developers/builders to either post a percentage of the cost of development into a form of guaranteed financial assistance to address future structural or building/related problems or deficiencies which are clearly not owner-caused. This could be a requirement that a certain percentage of funds received from the sale of each condo unit goes into an escrow fund useable only to address building/structural deficiencies, or a bond, or a letter of credit. We're flexible but the point is to have some sort of fund established by the developer to at least seed repairs to condo units that, within a reasonable time after being constructed (say, 2 years? We'd like to know what other states do on this point or if there's some already-in-place comparable time frame) have serious construction/building deficiencies that are a result of the developer or builder.
  4. Require an inspection process established by the municipality to ensure inspections throughout development. The goal is to ensure that the condo units & other condo facilities (club house, etc.) are being constructed in accordance with the approved plans and the development agreement, in addition to complying with relevant building codes. Perhaps general housing law offers an inspection process requirement that could be utilized here, for condo development/construction?
  5. Create rights of actions for the condo Association and the county DA to enforce the development agreement and pursue actions against sub-contractors in the same way that the local municipality does now.
  - TKK 6. Require licensure of community managers. 703.10(2)(a)+(d), 703.163(10), 703.365(3)(a)
  7. Require condo associations to have each year's financial statements reviewed by a certified accountant.



Stonefield Village  
Memo from L...

I imagine you will have questions. Please let me know what those are – preferably in writing so that I can most easily share them with our active constituents who are following this issue and seek their input.

Thanks,  
Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE CORY MASON

FROM: Scott Grosz, Staff Attorney

RE: Wisconsin Condominium Law

DATE: August 30, 2010 (Revised September 2, 2010)

This memorandum, prepared at the request of your aide, Vicky Selkove, provides a description of selected Wisconsin statutes in ch. 703, Stats., relating to condominiums. In particular, the memorandum provides information relating to expandable condominiums; rights and responsibilities during the period of declarant control of a condominium's affairs; responses available to unit owners aggrieved by a declarant's actions; and local regulation of condominium associations.

According to Ms. Selkove, your inquiry was prompted by questions raised by a number of condominium unit owners in your district relating to dissatisfaction with the management of their condominium. This memorandum is intended to provide you with information of a general background nature and should not be considered a substitute for private legal advice rendered on the basis of particular facts or circumstances. It is suggested that, if they have not already done so, the condominium unit owners should consult private legal counsel concerning their legal options in the situation at hand.

### **CONDOMINIUM FORMATION**

A condominium is a form of property ownership. [s. 703.37, Stats.] A condominium is created when a property owner elects to file a condominium declaration for his or her property with the register of deeds of the county where the property is located. At that time, the property owner becomes the "declarant" of the condominium for purposes of ch. 703, Stats. The condominium declaration specifies details about the physical characteristics of the property that constitutes the condominium, the divisions of property ownership that will constitute condominium units and common areas, and the authorized powers of the condominium. [s. 703.09 (1), Stats.] Later in the development process, the creation of condominium bylaws provides more management details and, in some cases, limitations on the condominium's powers. [s. 703.10, Stats.]



### **EXPANDABLE CONDOMINIUMS**

Since the creation of ch. 703, Stats., in 1978, the chapter has permitted a declarant to reserve the right to expand a condominium, if certain requirements are satisfied. This type of condominium is referred to as an “expandable condominium.” A declarant may reserve the right to expand a condominium by subjecting additional property to the condominium declaration in such a manner that as each additional property is subjected to the condominium declaration, the percentage of undivided interests in the common elements of the preceding and new property is reallocated between the unit owners on the basis of the aggregate undivided interest in the common elements of the property. [s. 703.26 (1), Stats.] The right to expand the condominium may be reserved for a period not exceeding 10 years from the date of recording of the declaration. [s. 703.26 (2) (d), Stats.]

In order to establish an expandable condominium, each of the following conditions must be satisfied:

- The declaration establishing the condominium must describe each parcel of property which may be added to the condominium. [s. 703.26 (2) (a), Stats.]
- The declaration establishing the condominium must show the maximum number of units which may be added, and the percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes appurtenant to each unit following the addition of property to the condominium, if added. The percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium. [s. 703.26 (2) (b), Stats.]
- The condominium plat for the original condominium must include, in general terms, the outlines of the land, buildings, and common elements of new property that may be added to the condominium. [s. 703.26 (2) (c), Stats.]

If the above conditions are satisfied, a declarant may expand a condominium by recording an amendment to the declaration showing new percentage interests of the unit owners and the voting rights of each new owner in the expanded condominium, and by recording an addendum to the condominium plat that includes the detail and information concerning the new property as required in the original plat. [s. 703.26 (3), Stats.]

Chapter 703, Stats., provides several differences between expandable condominiums and ordinary condominiums. First, under an expandable condominium, the permitted period of declarant control may be up to 10 years, rather than three years in the case of any other condominium.<sup>1</sup> [s. 703.15 (2) (c) 1. a., Stats.] Additionally, s. 703.09 (3) (a), Stats., generally requires compensation to be paid to a unit owner if an amendment to a condominium declaration reduces the unit owner’s interest in the

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<sup>1</sup> Note that regardless of the type of condominium, the period of declarant control may not exceed 30 days after the conveyance of 75% of the common element interest to purchasers. [s. 703.15 (2) (c) 1. a., Stats.]

common elements and increases the value of the declarant's or any other unit owner's interest in the common elements. This compensation requirement does not apply to an expanding condominium.

### **DECLARANT CONTROL**

Chapter 703, Stats., contains provisions on management and control that take into consideration the evolving nature of a condominium development, from the time when construction commences to the point when each unit has been sold to an individual who intends to occupy the unit. Generally, once a condominium is mature, its affairs are governed by an "association," defined as a non-stock, non-profit corporation or an unincorporated association that consists of the unit owners acting together as a group.<sup>2</sup> [s. 703.02 (1m), Stats.] In the preceding stages of a condominium's development, ch. 703, Stats., permits a period of "declarant control" of the association prior to a transfer of control to the unit owners of the association.<sup>3</sup> In every condominium, an association must be established by the declarant, no later than the date of the first conveyance of a unit to a purchaser. [s. 703.15 (2) (a), Stats.] Until an association is established, a declarant has the power and responsibility to act in all instances where action would otherwise be required by the association. [s. 703.15 (2) (b), Stats.] If there is a unit owner other than the declarant, a declaration may not be amended to increase the scope or period of the declarant control. [s. 703.15 (2) (c) 2., Stats.]

As described above, the length of the declarant control period varies based on whether the condominium is an expandable condominium, but the general responsibilities of a declarant during this time period do not vary based on the type of condominium. Under declarant control, a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association, or to exercise the powers and responsibilities otherwise assigned by the declaration or ch. 703, Stats., to the association or its officers. [s. 703 15 (2) (c) 1., Stats.] A declarant may assign his or her rights and obligations under ch. 703, Stats., if the assignment is recorded as an amendment to the declaration and the assignee signs and acknowledges the assignment. Any assignment by a declarant must consist of all rights and obligations under ch. 703, Stats. [s. 703.09 (4), Stats.]

Accordingly, if the condominium is under the control of the declarant, or the declarant's properly recorded assignee, the powers and responsibilities of the association flow to the declarant or assignee. Described in s. 703.15 (3), Stats., examples of an association's powers and responsibilities include the power to:

- Adopt budgets for revenues, expenditures, and reserves.
- Levy and collect assessments for common expenses.
- Employ and dismiss employees and agents.

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<sup>2</sup> Section 703.155, Stats., permits management via a "master association," a variation on the association-based management of a condominium where powers of an association are delegated to a master association which exercises those powers on behalf of one or more condominiums or for the benefit of the unit owners in one or more condominiums.

<sup>3</sup> An exception to declarant control exists for "small condominiums," consisting of no more than 12 units, where the association shall exist immediately upon formation of the condominium. [s. 703.365 (5) (a), Stats.]

- Sue on behalf of all owners.
- Exercise other powers conferred by the condominium instruments or bylaws.

No regular or special meeting of an association may be held except on at least 10 days written notice delivered to every unit owner. [s. 703.15 (4) (c), Stats.] Also, an association must keep records of the receipts and expenditures affecting the common elements, and specifying and itemizing the maintenance and repair expenses of the common elements. The records must be available for examination by the unit owners at convenient hours. [s. 703.20 (1), Stats.] While no published opinions of the Wisconsin courts have interpreted these provisions, it appears reasonable to conclude that a declarant must satisfy these requirements. As described above, responsibilities of an association generally apply to the declarant during the period of declarant control.

Additionally, s. 703.20 (3), Stats., provides the declarant with specific records responsibilities during the period of declarant control. It states that:

[T]he declarant is responsible for creating and maintaining the financial and operational records of the association and shall turn the records over to the directors elected under s. 703.15 (2) (f).

Section 703.20 (3), Stats., also specifies that during the period of declarant control and one year thereafter, upon request to the association by the lesser of three unit owners or 10% of the units, not including units owned by the declarant, the association shall arrange for an independent audit of its financial records at the association's expense. Accordingly, an initial audit under this section would be paid as a common expense of the association, effectively shared by all owners through the condominium's assessments. The cost of any audit requested within 36 months of a previous audit shall be paid for solely by the requesting unit owners.

### **RESPONSES AVAILABLE TO AGGRIEVED UNIT OWNERS**

#### **Tort and Contract Liability**

Chapter 703, Stats., does not specify a process for dispute resolution, such as the ability of unit owners to "divorce" themselves from a declarant.<sup>4</sup> Accordingly, aggrieved unit owners often must pursue claims in the judicial system as a means of dispute resolution. During the period of declarant control, the declarant must act in the interests of the association and, therefore, the unit owners, and may risk liability for breach of fiduciary duty if he or she acts otherwise. [*Wisconsin Condominium Law Handbook*, s. 5.5 (3d ed. 2006).] Section 703.25 (1), Stats., specifies:

An action for tort alleging a wrong done by any agent or employee of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the

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<sup>4</sup> While s. 703.28, Stats., refers to the "removal" of all or any part of a property from the provisions of ch. 703, Stats., the section requires collective action by "all of the unit owners." Since a declarant is also a unit owner during the period of declarant control, it is unlikely this statute would have practical applicability in an adversarial context.

association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

Section 703.25 (2), Stats., specifies:

An action arising from a contract made by or on behalf of an association shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved under the declaration. No unit owner shall be precluded from bringing such an action by reason of its membership in the association or its status as an officer.

### **Continued Liability for Condominium Assessments**

Generally, s. 703.165, Stats., specifies that a unit owner is liable for all assessments coming due while owning a unit, including any assessments coming due during the pendency of a claim by the unit owner against the association. Non-payment of assessments permits an association to file a lien against a condominium unit.

### **LOCAL REGULATION**

Section 703.27, Stats., places a number of restrictions on local units of government with regard to condominium regulation. Section 703.27, Stats., states:

(1) A zoning or other land use ordinance or regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium that it would not impose if the development were under a different form of ownership. No provision of a state or local building code may be applied differently to a building in a condominium than it would be applied if the building were under a different form of ownership unless the different application is expressly permitted in that provision and the different application is reasonably related to the nature of condominium ownership. No subdivision ordinance may apply to any condominium unless the ordinance is, by its express terms, applicable to condominiums and the application is reasonably related to the nature of condominium ownership.

(2) No county, city, or other jurisdiction may enact any law, ordinance, or regulation that would impose a greater burden or restriction on a condominium or provide a lower level of services to a condominium than would be imposed or provided if the condominium were under a different form of ownership.

A historical review of case law on local regulation suggests that local regulation of condominiums most often arises in the context of the physical attributes of condominiums and the relationship between condominiums and local regulation of land use.

Conversely, there appears to be little information on local regulation of the organizational attributes of condominiums or condominium associations. Nonetheless, there are a number of issues that may impede such local regulation. For example, a court may invalidate local regulation of a condominium's organizational attributes on the grounds that the regulation is preempted by ch. 703, Stats., given the comprehensive nature of the chapter and the state interest in uniform statewide rules for condominium organization. Also, as described in s. 703.27, Stats., local regulation may not, generally, prohibit condominiums or impose requirements on condominiums that would not be imposed on developments if held in other forms of property ownership. In addition to the stated limitations of s. 703.27, Stats., the presence of the section in ch. 703, Stats., could be interpreted as evidence that the Legislature intended for local units of government to have only the explicit, limited ability to act with regard to condominium regulation as provided in the chapter.

Additionally, a condominium association is a legal entity formed under state law, often taking the form of a nonstock, nonprofit corporation, and a condominium is, generally, a form of property ownership. Local regulation of such an entity or ownership could be scrutinized as an impairment of contract or a takings, especially if the local regulation had the effect of redistributing property rights from one type of owner (e.g., a declarant) to another (e.g., a unit owner).

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

SG:ksm:jal

## Kahler, Pam

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**From:** Selkowe, Vicky  
**Sent:** Monday, April 18, 2011 12:29 PM  
**To:** Kahler, Pam  
**Subject:** FW: questions from bill drafter  
**Attachments:** Developer's Agreement with Village.pdf

Pam –  
Additional information from our constituents about the initial questions you raised.

Thanks,  
Vicky

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

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**From:** Joe Lourigan [mailto:joelourigan@gmail.com]  
**Sent:** Saturday, April 16, 2011 11:02 AM  
**To:** Selkowe, Vicky  
**Cc:** mike.ellenbecker@aegiscmlc.com; 'robbin vester'  
**Subject:** RE: questions from bill drafter

I accidentally hit send before I was done typing the e-mail. : ) Please see my ending below.

Joe

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**From:** Joe Lourigan [mailto:joelourigan@gmail.com]  
**Sent:** Saturday, April 16, 2011 10:54 AM  
**To:** 'Selkowe, Vicky'  
**Cc:** 'mike.ellenbecker@aegiscmlc.com'; 'robbin vester'  
**Subject:** RE: questions from bill drafter

Hi Vicky,

Thanks for your e-mail.

Robbin is right. The community manager is someone hired by the Association or could be hired by the developer while the condo complex is still under developer control. It's a position that used to be called "Property Manager" but more recently the term "Community Manager" has been used for condominiums. The distinction is meant to separate those who manager commercial real estate and apartments from those who manage condominium associations where it is owner occupied and not

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rented. A community manager becomes more involved in the community and its people rather than simply taking care of the property.

Robbin your correct on item 2 also. The agreement is simply a development plan that the local community and ideally, the condo association can hold the developer to following. A good development plan will have a site drawing showing where buildings, roads, water and sewer lines will run, grading, and a whole host of other things will be placed on the property. It will describe the type of construction that will happen, such as building and road construction. It will also have timelines when things need to be completed by.

For example, in our specific case, the developer did not complete the roads according to the approved plan. Having the approved plan would give both the municipality and the association the legal authority to pursue the developer. In addition it would give new condo buyers the ability to see what they are buying, by being able to go to the local community to review the plan. In our case the development agreement referred to a set drawings and specs as an attachment to the agreement, but under current law we as an association were having a difficult time enforcing the development agreement against the developer because it was an agreement between the village and the developer. Despite several requests, the Village of Sturtevant refused to enforce its own development agreement. Hopefully this legislation would give new condo associations the legal power to go after a bad developer using the development agreement without the approval from the local municipality. In addition, if a developer were required to put up financial assurance either through bonds or a letter of credit, that the association and the local community have to sign off on in order for the developer to get that money back, it will hopefully weed out bad developers and create an incentive for developers to follow the approved plans.

Good developers may actually like this type of legislation to some degree because it has the potential of getting rid of bad developers which make it difficult for the good developers to compete with and it may make it easier for potential condo buyers of a new condo get a bank loan, before the project is complete.

I have attached the development agreement between the Village of Sturtevant and the developer of our complex as an example. They actually have a pretty good agreement. It's too bad the village was afraid to actually enforce it.

I hope this helps.

Thanks,

Joe

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**From:** robbin vester [mailto:robbin2112@yahoo.com]

**Sent:** Thursday, April 14, 2011 7:18 PM

**To:** Selkove, Vicky; Joe Lourigan

**Cc:** robbin2112@yahoo.com

**Subject:** Re: questions from bill drafter

Hello Vicky,

I will hop in here and then Joe can work in his wonderful words to add to this conversation..... :)

1. Community Manager is someone that the Association hires to oversee the day to day operations of

4/18/2011

the community.

2. I am thinking that this piece was designed to make the municipality liable for holding the developer to the agreement. The municipality has to authorize and approve the plan. If they don't hold the developer responsible for building or completing the development as planned the community is shut out for legal reasons. One of the items we were looking at was to have the municipality forced to turn over the agreement with the developer to the association if they don't want to make the builder comply with the approved and filed plans. Joe am I on the right path with this one?

Thanks Vicky,

Please let us know what else we can help with.

Robbin

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**From:** "Selkove, Vicky" <Vicky.Selkove@legis.wisconsin.gov>  
**To:** Joe Lourigan <joelourigan@gmail.com>; robbin vester <robbin2112@yahoo.com>  
**Sent:** Thu, April 14, 2011 5:41:03 PM  
**Subject:** questions from bill drafter

Hi Joe & Robbin,

I'm working with the bill drafter on the "Condo Owners' Bill of Rights" bill and I wanted to run a couple of questions by you:

1. The drafter is unclear what you mean by "community manager" – is this someone hired by the developer to manage the properties? Someone hired by the Association?
2. I asked the bill drafter to do the following: "Require condo developers/builders to have an approved set of plans for the development and a written agreement with the local municipality" and the question back is "I'm going to modify that section so that the local municipality, rather than the county, is required, rather than authorized, to review and approve the plat and declaration. I don't know what sort of agreement between the condo developer and municipality you have in mind, however. What is each agreeing to?" Can you give me and the drafter some guidance on this?

Thanks,

Vicky

**Vicky Selkove**

**Office of State Representative Cory Mason**

**62nd Assembly District**

State Capitol, Room 6 North

PO Box 8953, Madison, WI 53708

Phone: (608) 266-0634

Toll-free: (888) 534-0062

4/18/2011



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H O S T A K  
H E N Z L  
B I C H L E R

ATTORNEYS AT LAW

**COPY**

Robert R. Henzl  
Robert H. Bichler  
James W. Hill  
Stephen J. Smith  
Thomas M. Devine  
Timothy J. Pruitt  
Susan M. Perry  
David A. Wolfe  
JoAnne Breese-Jaeck  
Kristin M. Callerty  
Cheryl A. Hagen  
Elaine Sutton Ekes  
Christopher A. Geary  
Erik R. Guenther

Of Counsel:  
Kenneth F. Hostak

September 8, 2003

Robert A. Patch, C.E.O.  
Heartland Development Group L.T.D.  
260 Regency Court  
Suite 105  
Brookfield, WI 53045

Re: Amendment to Development Agreement

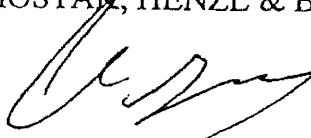
Dear Bob:

Enclosed are two original and fully executed Amendments to Development Agreement with respect to the Villas of Sturtevant project. We have retained 1 copy for our records and one original to forward on to the Village of Sturtevant.

Should you have any questions as to the enclosed, please call.

Sincerely,

HOSTAK, HENZL & BICHLER, S.C.



Christopher A. Geary  
cgeary@hnb.com

CAG/emp  
Enclosures

cc: Village of Sturtevant, c/o Barb Pauls, Clerk-Treasurer

731190.021

**AMENDMENT TO  
DEVELOPMENT AGREEMENT**

This is an amendment made on Aug. 19<sup>th</sup>, 2003, to the Development Agreement (hereinafter, "Agreement") entered into November 12, 2002 between the Village of Sturtevant (hereinafter, "Village"), the Community Development Authority of the Village of Sturtevant (hereinafter, "CDA"), and Villas of Sturtevant, L.P. (hereinafter, "Developer").

**WITNESSETH:**

**WHEREAS**, the Agreement contained certain deadlines and guarantees concerning the fair market value of the development, all of which were based upon the parties' belief that the property that is the subject of the Agreement (hereinafter, "Property") would be available to the Developer no later than April of 2003; and

**WHEREAS**, the Property is not, in fact, available for development until a later date than was anticipated by any of the parties when they entered the Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. That Section II, Paragraph E, of the Agreement is amended to read as follows:

"E. Developer guarantees a minimum fair market value of the development of \$35,000,000 in accordance with the following schedule:

On or before:	Minimum value of development:
January 1, 2003	\$3,000,000
January 1, 2004	\$5,000,000
January 1, 2005	\$16,000,000
January 1, 2006	\$30,000,000
January 1, 2007	\$35,000,000"

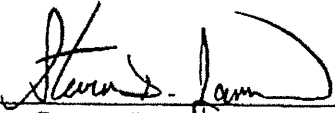
2. That the Village shall, in light of the Property's extended unavailability as described above, authorize the issuance of building permits for the construction of the buildings designated as 23 through 30, as numbered on the Overall Utility Plan attached hereto as Exhibit B, prior to the completion of sewer and water service to the sites thereof, prior to the completion of a Village-accepted public road to the sites thereof, and prior to the completion of a final site grading/drainage plan, as would otherwise be required by Village ordinance. Instead, the Village will authorize the issuance of building permits for the construction of the specified buildings upon the completion, to the satisfaction of the Village Engineer, of a hard surface roadway sufficient to allow safe access to the building sites by emergency vehicles and of a site grading/drainage plan sufficient to address, to the satisfaction of the Village Engineer, reasonable drainage concerns. The Developer remains responsible for the payment of all applicable permit fees. No building permit for any of the remaining buildings to be constructed during Phase I, as indicated in Exhibit B, or during any other construction Phase of the Development, shall be issued until the Developer has fully complied with all applicable Village ordinances. \*

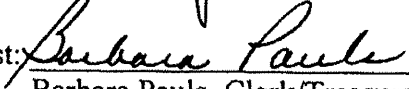
3. That the Developer, in consideration for the above concessions made by the Village and the CDA, the sufficiency of which consideration is hereby acknowledged, releases from liability the Village and the CDA, including their employees, agents and officials, and agrees to indemnify, hold harmless and defend them from and against all claims, costs and liability of every kind and nature, for injury or damage received by any person or entity in connection with, on account of, or in any way related to the Developer's delayed access to the Property or the Village's agreement to issue the above-referenced building permits prior to the completion of the site's final grading plan, roadway and water/sewer construction.

4. That, in all other respects not addressed by this Amendment, the Agreement remains in full force and effect.

(SIGNATURE PAGE - AMENDED DEVELOPMENT AGREEMENT)

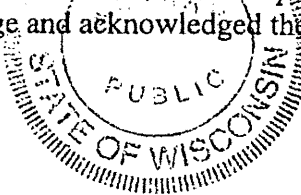
VILLAGE OF STURTEVANT

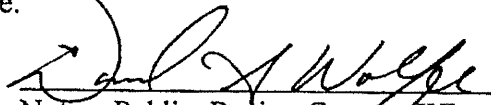
By:   
Steven Jansen, President

Attest:   
Barbara Pauls, Clerk/Treasurer

STATE OF WISCONSIN     )  
                                      ) SS:  
COUNTY OF RACINE     )

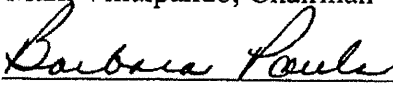
Personally came before me this 21 day of September, 2003, the above-named Steven Jansen and Barbara Pauls, President and Clerk/Treasurer, respectively, of the Village of Sturtevant, to me known to be the persons who executed the foregoing instrument on behalf of the said Village and acknowledged the same.



  
Notary Public, Racine County, WI  
My Commission: is permanent

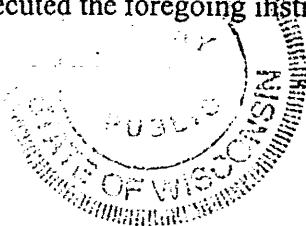
COMMUNITY DEVELOPMENT  
AUTHORITY OF THE VILLAGE OF  
STURTEVANT

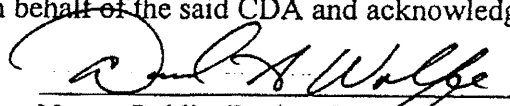
By:   
Mark Villalpando, Chairman

Attest:   
Barbara Pauls, Assistant Director

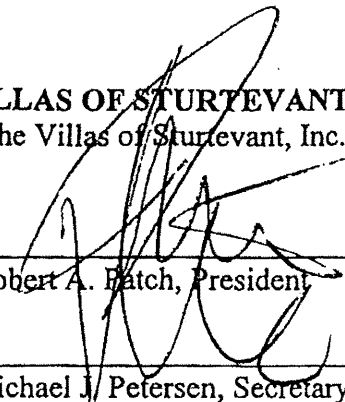
STATE OF WISCONSIN     )  
                                      ) SS:  
COUNTY OF RACINE     )

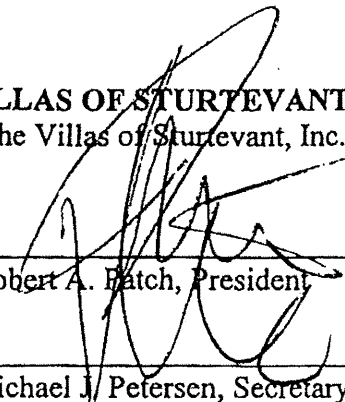
Personally came before me this 21 day of September, 2003, the above-named Mark Villalpando and Barbara Pauls, Chairman and Assistant Director, respectively, of the Community Development Authority of the Village of Sturtevant, to me known to be the persons who executed the foregoing instrument on behalf of the said CDA and acknowledged the same.



  
Notary Public, Racine County, WI  
My Commission: is permanent

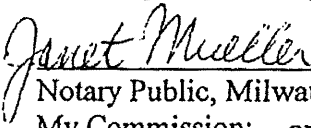
THE VILLAS OF STURTEVANT, L.P.  
The Villas of Sturtevant, Inc., G.P.

By:   
Robert A. Patch, President

Attest:   
Michael J. Petersen, Secretary

STATE OF WISCONSIN    )  
                                  ) SS:  
COUNTY OF MILWAUKEE )

Personally came before me this 21st day of August, 2003, the above-named Robert A. Patch and Michael J. Petersen, President and Secretary, respectively, of The Villas of Sturtevant, Inc., to me known to be the persons who executed the foregoing instrument on behalf of the said corporation, and as general partner for the Villas of Sturtevant, L.P., and acknowledged the same as the act and deed of the corporation and partnership.

 Janet Mueller  
Notary Public, Milwaukee County, WI  
My Commission: expires January 15, 2006.

This instrument drafted by:  
Timothy J. Pruitt (7/18/2003-731190.021)

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), is made by and between the **VILLAGE OF STURTEVANT** (hereinafter "Village"), a municipal corporation and political subdivision of the State of Wisconsin, located in Racine County; **COMMUNITY DEVELOPMENT AUTHORITY OF THE VILLAGE OF STURTEVANT** (hereinafter "CDA"), a duly constituted redevelopment authority under Wisconsin Statutes; and **THE VILLAS OF STURTEVANT, L.P.**, the Developer, its successors and assigns (hereinafter "Developer"). "Sturtevant" as used in this Agreement shall mean the Village and the CDA.

### WITNESSETH:

**WHEREAS**, Developer intends to purchase from the CDA the property described in Exhibit A, which is attached hereto and incorporated herein by reference; and

**WHEREAS**, upon acquisition of the property described in Exhibit A (the "Property"), Developer will redevelop, rehabilitate, restore, and remodel the Property for use as a high quality commercial, retail and residential development; and

**WHEREAS**, the Village and the CDA, after study and discussion, and by approval and execution of this Agreement, have found and determined that the economic vitality of the amended Tax Incremental Financing District #3 is essential to the economic health of the Village; and,

**WHEREAS**, Developer has filed or will file with Sturtevant, pursuant to the requirements of the Village Ordinances, the following plans, specifications, documents and exhibits for the development of the Property as a project to be commonly known as the Villas of Sturtevant and Villa Square:

1. A CSM, plat or survey of the Property, which shall be incorporated herein by reference and attached as Exhibit B.
2. The contemplated uses described in Exhibit C, which is attached hereto and incorporated herein by reference.
3. A scale conceptual development plan showing the location, type and size of every proposed use for the Property, including the location, type and size of the proposed structures, driveways, driveway access road(s), parking facilities, open space, screening and landscape plans, including a statistical table showing the size of the site in square feet and acreage, attached hereto as Exhibit D and incorporated herein by reference.
4. Architectural drawings of all buildings and structures and sketches showing the design characteristics and treatment of exterior elevations and

floor plans of the proposed structure, attached hereto as Exhibit E and incorporated herein by reference; and,

**WHEREAS**, the Developer has filed, or will file, with Sturtevant an application for use and zoning approvals of the Property, as necessary to accommodate the Property's redevelopment and use as commercial, retail, and residential property, including a general development plan and precise implementation plan as required in Chapter 17 of the Code of Ordinances for the Village of Sturtevant; and

**WHEREAS**, the Community Development Authority of Sturtevant has given favorable conceptual approval of the proposed development, and desires to ensure the implementation of the redevelopment of the Property and thereafter a continued and uninterrupted use and maintenance of the Property;

**NOW, THEREFORE**, in consideration of the mutual covenants herein exchanged, the parties hereto agree as follows:

#### **SECTION I**

##### **STURTEVANT'S OBLIGATIONS:**

- A. Sturtevant shall timely complete further zoning, development and use approvals, pursuant to all ordinances applicable to the development and governing the Property.
- B. The CDA shall acquire through condemnation or by acquisition in lieu thereof, the parcels of real estate described in Exhibit A, and shall in turn convey the Property to the Developer, in accordance with the terms and conditions of an offer to purchase in the form attached hereto as Exhibit F, for the sum of \$2,000,000.

#### **SECTION II**

##### **DEVELOPER'S OBLIGATIONS AS TO SITE DEVELOPMENT AND IMPLEMENTATION SCHEDULE:**

- A. Developer shall redevelop the Property into a high quality commercial, retail and residential development in accordance with its proposal delivered to, and accepted by, the CDA.
- B. Closing on the sale of the Property from the CDA to the Developer shall take place on or before December 1, 2002.
- C. Commencement of construction activity, following closing on the purchase contract with the CDA, shall be on or before June 1, 2003.
- D. Substantial completion shall be in accordance with the schedule attached as Exhibit G, which is incorporated herein by reference.



- E. Developer guarantees a minimum fair market value of the development of \$35,000,000 in accordance with the following schedule:

On or before:	Minimum value of development:
January 1, 2003	\$3,000,000
January 1, 2004	\$7,500,000 <i>8? SHOWN</i>
January 1, 2005	\$18,750,000
January 1, 2006	\$30,000,000
January 1, 2007	\$35,000,000

- F. Developer agrees to develop the Property and to construct all buildings and structures thereon in strict accordance with the plans and specifications, and substantially in accordance with the attached Exhibits, as filed and approved in final form by the Community Development Authority (CDA) and the Village Board, which plans and specifications, once approved, are incorporated herein by reference and deemed a contractual obligation of Developer.

- G. Developer further agrees to the following:

1. At Developer's expense, the project shall be timely staked including, without limitation, as reasonably necessary to determine property boundaries and building and utility locations, as may be required by the Village Engineer or his designee.
2. At Developer's expense, a CSM, a survey or plat of the site will be prepared for approval, which document shall conform to the approved general site development plan and show thereon the areas, if any, dedicated to the public (indicating the specified use thereof).
3. All cables and wires for electric, telephone and cable television services shall be installed underground at Developer's expense. No new aboveground poles or wires shall be permitted on the Property.
4. Easements for municipally owned sanitary sewer, storm sewer and water mains shall be granted to Sturtevant, or its designee where necessary, by a mutually agreed upon separate document(s), in accordance with detailed utility plans approved by the Village Engineer.
5. All gas mains and other utility service laterals to each building or structure within the site shall be constructed under the supervision of the Village Engineer by and at the sole expense of Developer.

6. All surface driveways, surface parking lots, lighting and landscaping are to be installed and maintained by Developer, its successors and assigns, at its expense.
7. Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping.
8. Developer shall be responsible for placing and maintaining all erosion control measures necessary and required throughout construction on the Property.
9. Garbage collection services shall be provided by Developer, each subsequent developer, or any successor or assignee, at its own expense. Garbage shall be contained on the Property in trash receptacles that must be approved by Sturtevant and provided by the Developer, and shall be collected privately.
10. If permanent occupancy permits are requested prior to the completion of landscaping, then in order to insure completion of said landscaping, Developer shall post a Letter of Credit in an amount equal to one and one-half (1 ½) the determined cost of said landscaping. The cost is to be determined by the Village Engineer. In the event that permanent occupancy permits are requested prior to the completion of landscaping, the Village Engineer shall set a certain time, which shall not be unreasonable, by which landscaping is to be completed. If landscaping is not completed on time, the Village may have the work done and paid for with funds from the above-referenced security.
11. No other future structures, including but not limited to utility buildings and tool sheds, shall be constructed or installed on any portion of the Property without CDA and Village Board approval. The definition of structure shall be consistent with the definition contained within the Village's Zoning Code (Chapter 17).
12. Developer agrees to submit site drainage plans to control storm water runoff for approval by Sturtevant.
13. All work or obligations to be performed by the Developer pursuant to the terms of this Agreement shall be done in accordance with all applicable state, federal and local laws, rules, and regulations.

### SECTION III

#### **WHEN APPROVAL MAY BE TERMINATED:**

- A. Failure to comply with any of the provisions of Section II of this Agreement shall constitute a material breach and cause for termination of the approval of the

general development plan and precise implementation plan, provided that notice of such failure and an opportunity to cure have first been given to Developer by the Village as provided in Section IX. All use and zoning approvals granted in conjunction with approval of this project are specifically conditioned upon the Developer's compliance with this Agreement, the terms of which are specifically incorporated as conditions of any such grant, and upon Developer's default as determined by the Village Board, the rights created herein shall terminate, and future development on the Property shall require further zoning and use review, approval and grant.

*wait  
consideration  
on Village's  
part*

- B. In addition, the Village may terminate its approval of the general development plan and precise implementation plan, and all use and zoning approvals granted by the Village upon the filing of a Petition for bankruptcy or receivership pertaining to the Developer, its general partner or the officers executing this Agreement on behalf of the general partner.

#### SECTION IV

##### **MAINTENANCE OF DEVELOPMENT SITE:**

- A. Developer, its successors and assigns, in order to maintain the Property, including all open areas, buildings, structures and pavement agree to:
1. Keep all turf or grass in open areas mowed to maintain a height not to exceed four (4) inches.
  2. Keep all open areas free and clear of trash, paper, and other debris.
  3. Keep all trees and shrubbery trimmed and maintained on a regular schedule to assure that they are kept in a neat, healthy and attractive condition.
  4. Remove snow and ice from private, off-street parking areas, walks and access drives.
  5. Maintain all paved driveways and parking areas in good repair, and replace them with new, reconstructed pavement where such areas have become so out-of-repair that to repair them would be impractical or unaesthetic.
  6. Landscape pursuant to the approved landscape plan and keep in a neat and attractive condition all areas on the Property.
- B. Developer further agrees that should it fail to comply with the provisions of Section IV, or other provisions of this Agreement respecting the maintenance of the Property, Sturtevant may give written notice of such fact to the Developer, by personal delivery, certified mail, return receipt requested, addressed to the Developer at the following address: 260 Regency Court; Suite 105 Brookfield, WI 53045. Such notice shall advise the Developer of any maintenance matters

Sturtevant considers to be in default. The Developer shall have thirty (30) days after such notice has been given to rectify the complained of deficiencies in maintenance. In the event the Developer fails to rectify the complained of deficiencies in maintenance within thirty (30) days, or at the end of any reasonable extension agreed to by Sturtevant and the Developer, in writing, Sturtevant shall have the right to either correct the maintenance deficiencies using its own employees and equipment or contract for the work to be done by an independent contractor. Accurate records shall be kept of the expenses incurred by Sturtevant in rectifying such deficiencies in maintenance. Where the work involved is done by Sturtevant employees, such expenses shall include wages of all employees doing the work, the cost of materials used, a reasonable charge for the use of Sturtevant-owned equipment, plus a supervision and overhead charge of twenty-five percent (25%) of the total of all the foregoing charges as well as a charge for the actual employee benefit expense attributable to the work performed as computed by Sturtevant. Sturtevant shall invoice the Developer for any such expenses, by mail, in the same manner as previously provided herein for mailing a notice. The Developer shall pay any invoice in full not later than twenty (20) days after the mailing of the invoice. In the event the Developer does not pay the invoice within twenty (20) days as specified, the invoice shall be delinquent and Sturtevant shall have the right to enforce collection of the invoice by any of the following methods:

1. By extending such expenses and costs on the current or the next succeeding tax roll as an unpaid special assessment. Accordingly, the Developer does herewith consent and agree that such expenses and costs shall be considered a special assessment and shall be collectable as other unpaid special assessments, with the same force and effect as though the Wisconsin Statutes with respect to levying special assessments has been fully complied with.
  2. Sturtevant may take any further and appropriate action at law or in equity to enforce compliance with the maintenance provisions of this Agreement, and in the event of legal action the prevailing party shall be entitled to its costs and disbursements, and reasonable attorney fees.
- C. The Developer and its successors or assigns are jointly and separately responsible for compliance with these Section IV maintenance provisions, as well as any other maintenance provisions in this Agreement. Upon transferring any ownership interest in the Property or any portion thereof, the Developer shall obtain an address for notice purposes from each such transferee and provide such information to the Village. The Village may take any of the remedial or other steps outlined in this Section IV against the Developer and its successors or assigns.

### SECTION V

#### COVENANTS RUNNING WITH THE LAND:

This Agreement constitutes the entire Agreement between the parties, and all provisions of this Agreement shall be deemed to be covenants running with the land described in Exhibit A and shall be binding upon the parties' successors and assigns. The Agreement may be recorded with the Office of the Register of Deeds for Racine County.

### SECTION VI

#### AMENDMENTS:

This Agreement may only be rescinded, modified or amended, in whole or in part, by mutual written agreement of the parties hereto or their successors and/or assigns.

### SECTION VII

#### MISCELLANEOUS PROVISIONS:

- A. At the time of closing on the sale of the subject property, Developer shall furnish to Sturtevant an irrevocable Letter of Credit in the principal sum of \$250,000.00 in a form acceptable to Sturtevant and from a banking institution approved by Sturtevant. Said Letter of Credit shall expressly provide that it will not expire until released, in writing, by Sturtevant. Sturtevant shall release the Letter of Credit upon realization by the Developer of the \$35,000,000 minimum value of development guaranteed in Section II. If the value of the development does not proceed in accordance with the schedule set forth above in Section II, Sturtevant shall be entitled to draw on the Letter of Credit an amount of money equal to the deficiency in tax incremental revenue represented by the difference between actual and guaranteed value of development for the year in question. To the extent Sturtevant draws any such amount from the Letter of Credit in any year, such amount shall be reimbursed to developer by Sturtevant from excess tax incremental revenues generated from the development from exceeding the guaranteed levels of development in a subsequent year, as set forth in the above schedule. Sturtevant shall not be required to pay interest on amounts drawn on the Letter of Credit. In the event that the \$35,000,000 minimum value of development guaranteed above is not realized by January 1<sup>st</sup> of the first year following substantial completion as set forth in Exhibit G, Sturtevant shall be entitled to draw on the Letter of Credit, as set forth above, but shall have no obligation to reimburse Developer from future tax incremental revenues generated from the development.
- B. Restrictions of Sale, Transfer, Conveyance and Ownership. Neither Developer nor any future owner shall use, sell, transfer or convey ownership of the Property to any person or entity, in any manner which would render all or any part of the Property exempt from real or personal property taxation, without the prior written

consent of the CDA and Village, and shall execute and record deed restrictions effectuating this provision.

- C. This Agreement shall be binding upon the parties hereto and their successors and assigns.
- D. Force Majeure. As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riots, acts of God or the elements, governmental action, installation, wear, use, repairs, renewal, improvements, alterations, strikes or lockouts, picketing (whether legal or illegal), inability of a party or its agents or contractors, as applicable, to obtain fuel or supplies, or any other cause or causes beyond the reasonable control of such party or its agents or contractors, as applicable. No party to this Agreement shall be in default hereunder if such party or its agents and contractors, if applicable, are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence.
- E. This Agreement constitutes the entire agreement between the parties, superseding all prior oral or written representations, negotiations, understandings and agreements on the subject matter hereof, and there are no conditions to this Agreement that are not expressed herein.

#### SECTION VIII

##### **SEVERABILITY OF PROVISIONS:**

If any provision of this Agreement shall be held or declared to be invalid, illegal or unenforceable by reason of its being contrary to any applicable law, such provision shall be deemed to be deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provisions.

#### SECTION IX

##### **REMEDIES:**

- A. In the event of Sturtevant's or the Developer's default under this Agreement by failing to comply with its material terms, which default is not cured within thirty (30) days after written notice thereof to the defaulting party, the non-defaulting party or any third party beneficiaries of the non-defaulting party shall have all rights and remedies available under law or equity with respect to the default. In addition, and without limitation, the non-defaulting party or any third party beneficiaries shall have the following specific rights and remedies:
  - 1. With respect to matters that are capable of being corrected by the non-defaulting party, the non-defaulting party may, at its option, enter upon the Property for the purpose of correcting the default, and the non-defaulting party's reasonable costs in correcting same, plus interest as provided in

Subsection C below, shall be paid by the defaulting party to the non-defaulting party immediately upon demand;

2. Injunctive relief;
  3. Action for specific performance; and
  4. Action for money damages.
- B. Reimbursement. Any amounts expended by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, together with interest at the rate provided in Subsection C below, shall be reimbursed or paid to the non-defaulting party. If the defaulting party is the Developer, such amounts expended by the CDA and/or Village shall constitute a lien against the Property, as allowed by law, until such amounts are reimbursed or paid to the CDA and/or Village, and such lien shall be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- C. Interest. Interest shall accrue on all amounts required to be reimbursed by the defaulting party to the non-defaulting party pursuant to Subsection B above at the rate of Prime Rate as reported from time to time by the *Wall Street Journal* plus two percent (2%) per annum, from the date of expenditure by the non-defaulting party until the date reimbursed in full with accrued interest.
- D. Remedies are Cumulative. All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- E. Failure to Enforce Not a Waiver. Failure to enforce any provision contained in this Agreement shall not be deemed a waiver of the party's rights to enforce such provision or any other provision in the event of a subsequent default.
- F. Notice. The respective addresses to be used for all notices, demands or requests shall be as follows:

Developer:

The Villas of Sturtevant, L.P.  
260 Regency Court; Suite 105  
Brookfield, WI 53045

CDA and/or Village:

Community Development Authority  
of the Village of Sturtevant  
P.O. Box 595  
Sturtevant, WI 53177-0595

Village of Sturtevant  
P.O. Box 595  
Sturtevant, WI 53177-0595

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed and sealed by a duly authorized representative of Developer, and the Village of Sturtevant has caused this instrument to be executed by its Village President and countersigned by its Village Clerk upon duly given authority, and its Seal affixed hereto, and the Community Development Authority of the Village of Sturtevant has caused this instrument to be executed by its Chairman and countersigned by its Executive Director upon duly given authority on the dates set forth below.

### VILLAGE OF STURTEVANT

By: Allan Acker  
Allan Acker, President

Attest: Barbara Pauls  
Barbara Pauls, Clerk/Treasurer

STATE OF WISCONSIN    )  
                                  ) SS:  
COUNTY OF RACINE    )

Personally came before me this 12<sup>th</sup> day of November, 2002, the above-named Allan Acker and Barbara Pauls, President and Clerk/Treasurer, respectively, of the Village of Sturtevant, to me known to be the persons who executed the foregoing instrument on behalf of the said Village and acknowledged the same.

Carl Hahlem  
Notary Public, Racine County, WI  
My Commission: 9-14-2003



COMMUNITY DEVELOPMENT  
AUTHORITY OF THE VILLAGE  
OF STURTEVANT

By: [Signature]  
Steven Jansen, Chairperson

Attest: [Signature]  
James Henke, Executive Director  
Barbara Pauls, Assistant

STATE OF WISCONSIN )  
 ) SS:  
COUNTY OF RACINE )

Personally came before me this 12th day of November, 2002,  
the above-named Steven Jansen and James Henke, Chairperson and Executive Director,  
respectively, of the Community Development Authority of the Village of Sturtevant, to  
me known to be the persons who executed the foregoing instrument on behalf of the said  
CDA and acknowledged the same.

[Signature]  
Notary Public, Racine County, WI  
My Commission: 9-14-2003

THE VILLAS OF STURTEVANT, L.P.  
The Villas of Sturtevant, Inc.,  
Its General Partner

By: [Signature]  
Robert A. Patch, President

Attest: [Signature]  
Michael J. Petersen, Secretary

STATE OF WISCONSIN )  
WAUKESHA ) SS:  
COUNTY OF ~~RACINE~~ )

Personally came before me this 11th day of November, 2002,  
the above-named Robert A. Patch and Michael J. Petersen, President and Secretary,  
respectively, of The Villas of Sturtevant, Inc., to me known to be the persons who  
executed the foregoing instrument on behalf of the said corporation, and as general  
partner for the Villas of Sturtevant, L.P., and acknowledged the same as the act and deed  
of the corporation and partnership.

[Signature] Janet Mueller  
Notary Public, Racine County, WI Waukesha Co., WI  
My Commission: Expires January 15, 2006.

This instrument drafted by:  
Timothy J. Pruitt (September 4, 2002/731190.021)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1916/

PJK:|.....

nwn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA ✓  
X-ref  
D-note  
(in 5-5)

gen cat

- 1 AN ACT <sup>✓</sup>; relating to: length of declarant control, requiring a written agreement  
2 between the declarant and the municipality, <sup>✓</sup> requiring approval by the  
3 municipality of condominium instruments, <sup>✓</sup> and requiring certification of  
4 condominium financial statments. <sup>✓</sup>

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft. <sup>✓</sup>

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 5 SECTION 1. 703.07 (1) of the statutes is amended to read:  
6 703.07 (1) A condominium may only be created by recording condominium  
7 instruments that have been approved under s. 703.115 (1) <sup>✓</sup> with the register of deeds  
8 of the county where the property is located. A condominium declaration and plat  
9 shall be presented together to the register of deeds for recording. <sup>✓</sup>

SECTION 2. 703.115 (title) of the statutes is amended to read:

**703.115 (title) Local review and approval of condominium instruments.**

History: 1997 a. 333.

SECTION 3. 703.115 (1) (intro.), (a), (b) and (c) of the statutes are consolidated, renumbered 703.115 (1) and amended to read:

703.115 (1m) (intro.) A county may adopt an ordinance to require the review of No condominium instruments before recording instrument may be recorded unless it has been reviewed and approved by persons employed by the county of recording or by each city, village, or town that is in which the condominium is to be located in whole or in part in the county of recording if the ordinance does all of the following: (a) Requires the review to must be completed within 10 working days after submission of the condominium instrument and provides that, if the review is not completed within this period, the condominium instrument is approved for recording. (b) Provides that a condominium instrument may be rejected only if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c), and (d) and (3), 703.275 (5), and 703.28 (1m) or if the surveyor's certificate under s. 703.11 (4) is not attached to or included in the condominium plat. (e) If the person performing the review approves the condominium instrument, requires the person to shall certify approval in writing, accompanied by his or her signature and title.

History: 1997 a. 333.

\*\*\*\*NOTE: If you wish, the review and approval could be done by the county, instead.

SECTION 4. 703.115 (2) of the statutes is amended to read:

703.115 (2) An ordinance adopted under this section A city, village, or town performing a review under sub. (1) may authorize the county to charge a fee that reflects the actual cost of performing the review.

History: 1997 a. 333.

SECTION 5. 703.117 of the statutes is created to read:

Notwithstanding s. 703.27(1),

1           **703.117 Agreement between declarant and municipality.** (1) In this  
2 section, "municipality" means any city, village, or town.

3           (2) (a) The declarant shall enter into a written agreement with each  
4 municipality in which the condominium is to be located in whole or in part. The  
5 agreement shall specify the rights, responsibilities, undertakings, and promises of  
6 each party with respect to the condominium development, including all of the  
7 following, as applicable:

- 8           1. Permit issuance.
- 9           2. Zoning approvals.
- 10          3. Fee payment.
- 11          4. Development plan, including all buildings and other structures, roadways,  
12 open space, parking facilities, and landscaping.
- 13          5. Utility and water and sewer specifications.
- 14          6. Completion schedule.
- 15          7. Fair market value guarantees.
- 16          8. Form and amount of any security required.
- 17          9. Remedies in the event of default.

\*\*\*\*NOTE: I've listed a few items that were contained in the agreement you sent me.  
Do you want to include any other items specifically, not include a list of items at all,  
provide me with a different list?

\*\*\*\*NOTE: Do you want the agreement to be entered into by any specific time, such  
as before the condominium instruments are recorded, before construction begins, before  
any units are sold, etc.?

18           (b) The agreement shall include provisions that do all of the following:

- 19           1. Authorize the municipality to inspect the condominium property during the  
20 construction process in accordance with the process established under sub. (3).

1           2. Authorize the condominium association that is established under s. 703.15<sup>✓</sup>  
2   to enforce the agreement.<sup>✓</sup>

      \*\*\*\*NOTE: Generally, only parties to an agreement have standing to bring an action for damages or to enforce the agreement. Therefore, it is highly unusual for a party that is not party to the agreement to be able to enforce the agreement. For that reason, I have made giving the association standing part of the agreement, itself, in addition to proposed sub. (4) below. It is even more unusual for the county District Attorney to pursue legal action in a matter between private parties based on a contract between the parties. DAs enforce statutes on behalf of the general public, not private contracts. See the duties of DAs in s. 978.05. Are you sure you want to authorize DAs to enforce these private agreements?<sup>✓</sup>

      \*\*\*\*NOTE: You indicated that you want the association (and DA) to be able to "pursue actions against sub-contractors in the same way that the local municipality does now." I'm unfamiliar with this, as are the attorneys who draft in the civil procedure and municipalities areas. Can you explain this further? Where does the municipality get the authority to sue subcontractors unless there is a contract between them?<sup>✓</sup>

3           (c) The declarant shall provide a copy of the signed agreement under this  
4   section to the condominium association when it is established under s. 703.15.<sup>✓</sup>

      \*\*\*\*NOTE: Do you want the agreement to be recorded also?<sup>✓</sup>

5           (3) Notwithstanding s. 703.27 (2), in addition to any other inspections that may  
6   be required under law for compliance with any state or local building code, the  
7   municipality shall establish a process for inspecting the condominium property  
8   during its construction to ensure that the condominium is being constructed in  
9   accordance with the agreement under this section.<sup>✓</sup>

10          (4) Notwithstanding any other remedies provided for in the agreement, the  
11   condominium association established under s. 703.15<sup>✓</sup> has standing to enforce the  
12   agreement.<sup>✓</sup>

13          SECTION 6. 703.15 (2) (c) 1. a. of the statutes is repealed.<sup>✓</sup>

14          SECTION 7. 703.15 (2) (c) 1. b. of the statutes is amended to read:

15          703.15 (2) (c) 1. b. Three years in the case of any other condominium.<sup>✓</sup>

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225; 2003 a. 283.

      \*\*\*\*NOTE: Do you want to restrict the time for expanding a condominium under s. 703.26 (2) (d) to three years also?<sup>✓</sup>

16          SECTION 8. 703.20 (3) of the statutes is amended to read:

1           703.20 (3) ~~DECLARANT RESPONSIBILITIES~~ RESPONSIBILITIES FOR RECORDS. During  
2     the period of declarant control under s. 703.15 (2) (c), the declarant is responsible for  
3     creating and maintaining the financial and operational records of the association  
4     and shall turn the records over to the directors elected under s. 703.15 (2) (f). ~~During~~  
5     Annually during the period of declarant control under s. 703.15 (2) (c) and ~~for one~~  
6     ~~each year thereafter, upon written request to the association by the lesser of 3 unit~~  
7     ~~owners or the owners of 10% of the units, not including units owned by the declarant,~~  
8     the association shall arrange for an independent audit of its financial records by a  
9     certified public accountant at the association's expense. The cost of any additional  
10    audit requested ~~within 36 months after the completion of a previous audit by one or~~  
11    more unit owners shall be paid for by the requesting unit owner or owners.✓

History: 1977 c. 407; 1985 a. 188; 2003 a. 283.

12           **SECTION 9. Initial applicability.**

13           (1) The treatment of sections 703.07 (1),✓ 703.115 (title),✓ (1) (intro.),✓ (a),✓ (b),✓ and  
14    (c),✓ and (2),✓ 703.117,✓ and 703.15 (2) (c) 1. a.✓ and b.✓ of the statutes first applies to  
15    condominiums for which condominium instruments are <sup>first</sup> recorded on the effective  
16    date of the subsection.✓

17           **SECTION 10. Effective date.**

18           (1) This act takes effect on the first day of the 7th month beginning after  
19    publication.✓

20                           (END)

→ *note*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1916/

PJL  
PJK:|:....

nwn

Date

This preliminary draft contains proposed language for items 1., 2., 4., 5., and 7. of your drafting instructions. Item 6. will be included in a later version (Tracy Kuczenski will draft that part), and item 3. cannot be drafted without further, more specific information about the approach you want to take. (Vicky indicated to me that she would be sending information soon on the basis of information she expected to receive from NCSL.)

I'm confused about the problem that you are trying to address with this draft. Having more information might be helpful. Were condominium units purchased before completion of the condominium on the basis of plans that were subsequently changed or not followed? If a condominium unit is purchased after completion of the condominium project, there would likely be no recourse, but if a purchase is based on plans that are subsequently not followed, the owner likely has a cause of action for any damages incurred as a result of that infraction because the purchaser relied on those plans. (Although normally a purchase contract in that case would make the purchase contingent on the satisfactory completion of those plans.) Is the problem that there are no actual damages?

A basic tenet of black letter contract law is that only the parties to a contract have standing to enforce the contract. Your request to give the condominium association standing to enforce the agreement between the developer and the municipality contravenes that tenet. What sort of enforcement is contemplated? It might be completely unfeasible to undo some part of the development after it has been completed. And if the municipality, a party to the agreement, approved the modification to the original plans, what purpose does it serve to authorize the association to force compliance with the original plans? Do you want to place any limits on the circumstances under which an association may enforce original plans or on the types of enforcement that are permitted?

Your request to give the condominium association a cause of action against a subcontractor, if the cause of action relates to a breach of contract, also contravenes the tenet that only parties to a contract have standing to enforce the contract since the contract is between the subcontractor and the developer. If the cause of action, however, relates to bad workmanship or negligence or inexcusable delay, a unit owner directly affected already has a cause of action.

Condominiums are subject to the multi-family dwelling code under subch. VI of ch. 101, and consequently subject to inspections. Therefore, I drafted the inspection process in this draft as a private means for a municipality to have ongoing oversight over compliance with the private agreement between the developer and the municipality rather than over compliance with any building code.

I delayed the effective date for six months to provide some advance notice, since a number of processes must be instituted by both developers and municipalities. Do you want to provide even more time?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov



## Kahler, Pam

---

**From:** Selkowe, Vicky  
**Sent:** Tuesday, August 02, 2011 9:49 AM  
**To:** 'robbin vester'; Joe Lourigan; Kahler, Pam  
**Subject:** RE: Info for Conference Call Today @ 1pm

Thanks, Robbin.

Clicking on the CMCA link it looks like the certification requires completion of a course OR five-years experience as a community manager OR a community manager license from AZ, FL, CA, or NV. Rep. Mason is comfortable including CMCA certification as a requirement for community managers as discussed yesterday.

Thanks,  
Vicky

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

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---

**From:** robbin vester [mailto:robbin2112@yahoo.com]  
**Sent:** Monday, August 01, 2011 1:34 PM  
**To:** Selkowe, Vicky; Joe Lourigan; Kahler, Pam  
**Subject:** Re: Info for Conference Call Today @ 1pm

Here is Mike Ellenbeckers website where it talks about the CMCA and it tells you what he does. <http://www.aegiscmlc.com/>

---

**From:** "Selkowe, Vicky" <Vicky.Selkowe@legis.wisconsin.gov>  
**To:** robbin vester <robbin2112@yahoo.com>; Joe Lourigan <joelourigan@gmail.com>; "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov>  
**Sent:** Mon, August 1, 2011 9:40:13 AM  
**Subject:** Info for Conference Call Today @ 1pm

Robbin, Joe, Pam:

Our conference call to discuss the Condo Owners' Bill of Rights draft legislation is at 1pm today. Call-in information is as follows:

**Conference Dial-in Number: (805) 360-1000**  
**Participant Access Code: 231399#**

**Kahler, Pam**

---

**From:** Selkove, Vicky  
**Sent:** Monday, August 01, 2011 9:40 AM  
**To:** 'robbin vester'; 'Joe Lourigan'; Kahler, Pam  
**Subject:** Info for Conference Call Today @ 1pm

Robbin, Joe, Pam:

Our conference call to discuss the Condo Owners' Bill of Rights draft legislation is at 1pm today. Call-in information is as follows:

**Conference Dial-in Number: (805) 360-1000**

**Participant Access Code: 231399#**

So that we have this in front of us during the call, here is what we originally asked for in the bill:

- ✓1. Modify Wis. Stats. Sec. 703.26(2)(d) to reduce the length of time a declarant may remain in control of an expandable condo. It should be reduced from 10 years to 3 years.
- ✓2. Require condo developers/builders to have an approved set of plans for the development and a written agreement with the local municipality.
- ✓3. Require condo developers/builders to either post a percentage of the cost of development into a form of guaranteed financial assistance to address future structural or building/related problems or deficiencies which are clearly not owner-caused. This could be a requirement that a certain percentage of funds received from the sale of each condo unit goes into an escrow fund useable only to address building/structural deficiencies, or a bond, or a letter of credit. We're flexible but the point is to have some sort of fund established by the developer to at least seed repairs to condo units that, within a reasonable time after being constructed (say, 2 years? We'd like to know what other states do on this point or if there's some already-in-place comparable time frame) have serious construction/building deficiencies that are a result of the developer or builder.
- ✓4. Require an inspection process established by the municipality to ensure inspections throughout development. The goal is to ensure that the condo units & other condo facilities (club house, etc.) are being constructed in accordance with the approved plans and the development agreement, in addition to complying with relevant building codes. Perhaps general housing law offers an inspection process requirement that could be utilized here, for condo development/construction?
- ✓5. Create rights of actions for the condo Association and the county DA to enforce the development agreement and pursue actions against sub-contractors in the same way that the local municipality does now.
- ✓6. Require licensure of community managers.
7. Require condo associations to have each year's financial statements reviewed by a certified accountant.

Pam Kahler, our bill drafter at the Legislative Reference Bureau, had specific questions about #2 and #6 and we need to discuss in some detail possibilities and clarifications for #3. One possibility for #3, required by several other states, is creating something called a "warranty against structural defects" which could also require a bond to be posted.

I anticipate that our call will last at least an hour. Thank you. If you have any problems getting onto the call or any questions before then, please call me at 608-266-0634.

Thanks,  
Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

approved set of plans + agreement w/ municipality  
 \* add "elevation contours" to p 3, ll 12+13

? If municipality does not enforce, hoa may  
 violation  
 take action to enforce a violation, hoa may  
 (do not add this)

\* community manager → ensure that community manager  
 CMGA  
 certified manager of community associations  
 is certified by  
 + bonded  
 surety bond → is and specified by association

warranty against structural defects  
 post bond or letter of credit  
 establish fund

repairs require that each phase or bldg be  
 certified according to approved  
 plan  
 developer must provide  
 financial assurance

that may be used  
 3 yrs after completion

construction design defects  
 that does  
 repairs done  
 by do to cost  
 of how

warranty language from other states  
 + we choose or

municipality required to hire  
 engineer or architect do the inspections  
 but developer pay ok  
~~require~~

at least once per wk?

input phases of project

\* wait on this one →

\* Don't require DA to enforce dev. agreement  
 accountant  
 only while developer in control +

\* 703.20(3) keep current law but change to each year  
 reversed → keep as is in draft

movage → is certified by the Certified Manager of Community  
 Associations program certification program

**Kahler, Pam**

---

**From:** Selkove, Vicky  
**Sent:** Tuesday, August 02, 2011 11:56 AM  
**To:** Kahler, Pam

**Subject:** RE: NCSL Information Request

Thanks, Pam. Hold off on adding any additional inspection process at this point – we of course see how that is complicated and problematic. But it's not clear to me that the current inspection process for multi-family dwellings includes even a reference to compliance with developer's submitted plans or agreement with the municipality. It appears – please correct if I'm wrong or missing a code provision, highly likely – that the inspection rules relate only to compliance with specific building code or permitting requirements (i.e. making sure that the plumbing is done to plumbing code). So two questions:

101.12

- Could we add a requirement for condo developments that the existing inspection process has to ensure compliance not only with applicable building codes (i.e. mechanical, structural, plumbing, electrical, etc. etc. ) but also compliance with the approved plans submitted by the developer and any agreements between the developer and municipality? (So that compliance with those agreements is one part of what the inspection process is seeking to evaluate)
- I'm don't see whether there is a requirement of any public filing of or public access to those inspection records, which might be a solution to address our concerns here without requiring more frequent or enhanced inspection overall. For example, is there a current requirement that after an inspector comes out to inspect that the mechanical work or plumbing was done in accordance with building codes (and, following #1 above, in accordance with any developer plans/agreements between the developer/municipality), a copy of those inspection records must be filed with the municipality and made available to anyone who wishes to inspect them?

As always, feel free to call if that's easier than going back and forth on email.  
 Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
 State Capitol, Room 6 North  
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---

**From:** Kahler, Pam  
**Sent:** Tuesday, August 02, 2011 10:19 AM  
**To:** Selkove, Vicky  
**Subject:** RE: NCSL Information Request

Regarding whether any existing inspection process applies to condos, yes, the multifamily dwelling code under subch.VI of ch. 101 does. See the definition of "multifamily dwelling" in s. 101.971 (2). Most of the inspection requirements are in rules under the authority of s. 101.973 (1). Let me know if you do *not* want to add any additional inspection process for condos, such as the suggested weekly inspection by an engineer or architect for compliance with the agreement between the municipality and developer.

---

**From:** Selkove, Vicky

8/2/2011

**Sent:** Monday, August 01, 2011 3:59 PM  
**To:** Kahler, Pam  
**Subject:** RE: NCSL Information Request

Yes. It was my understanding that WI law does not currently contain any explicit warranty to protect against structural defects in condo construction. We'd like the bill to include such a warranty as well as a D.C.-style bond requirement.

Rep. Mason and I spoke about the issue of requiring inspections throughout the development/construction process. He believes that in residential home construction, contractors & builders currently have to have inspections done throughout the process before different permits can be granted (i.e. inspection of electrical, plumbing, foundation, etc.) He would like a similar during-construction inspection process to be required of condo developments. It was his understanding that municipal inspectors did this work now for these residential builds and he'd like to make sure those same requirements are in place for condo construction. Perhaps they already are?

Thanks,  
Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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---

**From:** Kahler, Pam  
**Sent:** Monday, August 01, 2011 3:13 PM  
**To:** Selkove, Vicky  
**Subject:** RE: NCSL Information Request

Vicky:

I've quickly looked over this material. It relates primarily to warranties. From my review it looks like the D.C. statute is the only one that actually requires the developer to post a bond - the others simply require the developer to warrant against defects.

---

**From:** Selkove, Vicky  
**Sent:** Monday, August 01, 2011 1:41 PM  
**To:** Kahler, Pam  
**Subject:** FW: NCSL Information Request

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North

8/2/2011

PO Box 8953, Madison, WI 53708

Phone: (608) 266-0634

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---

**From:** Scott Hendrick [mailto:[scott.hendrick@ncsl.org](mailto:scott.hendrick@ncsl.org)]

**Sent:** Friday, May 13, 2011 3:06 PM

**To:** Selkove, Vicky

**Subject:** NCSL Information Request

Vicky,

My colleague Doug Farquhar asked me to send you the attached information. Please feel free to contact me or Doug (303-856-1397; [doug.farquhar@ncsl.org](mailto:doug.farquhar@ncsl.org)) if you have any questions. Have a great weekend.

Scott Hendrick

Senior Policy Specialist

National Conference of State Legislatures

7700 East First Place

Denver, Colorado 80230

(303) 856-1409

[scott.hendrick@ncsl.org](mailto:scott.hendrick@ncsl.org)

**Kahler, Pam**

---

**From:** Selkowe, Vicky  
**Sent:** Wednesday, August 03, 2011 2:24 PM  
**To:** Kahler, Pam  
**Subject:** RE: NCSL Information Request

Ha! If the DC language on warranty is easier than FL's then go with that. Yes, three years (so use either DC or FL language but make it three years instead of their two). Thanks.

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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---

**From:** Kahler, Pam  
**Sent:** Wednesday, August 03, 2011 2:23 PM  
**To:** Selkowe, Vicky  
**Subject:** RE: NCSL Information Request

Very well. Unfortunately, I thought the DC stat. on warranty was much clearer than the bonding language. I can't make "heads or tails" out of the bonding language, but there is nothing else to follow. Robbin and Joe wanted a three-year warranty, is that what you want to go with?

---

**From:** Selkowe, Vicky  
**Sent:** Wednesday, August 03, 2011 2:18 PM  
**To:** Kahler, Pam  
**Subject:** RE: NCSL Information Request

The Florida warranty language looks like it accomplishes roughly the same thing as DC's in a simpler way. That might be cleaner warranty language and then add to that the DC bonding.

Thanks,  
Vicky

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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8/9/2011



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---

**From:** Kahler, Pam  
**Sent:** Monday, August 01, 2011 4:03 PM  
**To:** Selkove, Vicky  
**Subject:** RE: NCSL Information Request

The DC requirements are quite extensive, but I can include them if you wish. I will check with some other drafters to see if the inspection requirements for residential home construction would apply to condos already.

---

**From:** Selkove, Vicky  
**Sent:** Monday, August 01, 2011 3:59 PM  
**To:** Kahler, Pam  
**Subject:** RE: NCSL Information Request

Yes. It was my understanding that WI law does not currently contain any explicit warranty to protect against structural defects in condo construction. We'd like the bill to include such a warranty as well as a D.C.-style bond requirement.

Rep. Mason and I spoke about the issue of requiring inspections throughout the development/construction process. He believes that in residential home construction, contractors & builders currently have to have inspections done throughout the process before different permits can be granted (i.e. inspection of electrical, plumbing, foundation, etc.) He would like a similar during-construction inspection process to be required of condo developments. It was his understanding that municipal inspectors did this work now for these residential builds and he'd like to make sure those same requirements are in place for condo construction. Perhaps they already are?

Thanks,  
Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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---

**From:** Kahler, Pam  
**Sent:** Monday, August 01, 2011 3:13 PM  
**To:** Selkove, Vicky  
**Subject:** RE: NCSL Information Request

Vicky:

I've quickly looked over this material. It relates primarily to warranties. From my review it looks like the D.C. statute is the only one that actually requires the developer to post a bond - the others simply require the developer to warrant against defects.

8/9/2011

**Kahler, Pam**

---

**From:** Selkowe, Vicky  
**Sent:** Tuesday, August 02, 2011 10:03 AM  
**To:** Kahler, Pam  
**Subject:** RE: Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights  
Yes. Thanks.

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

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---

**From:** Kahler, Pam  
**Sent:** Tuesday, August 02, 2011 9:56 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights

If I understand correctly, you now want me to leave s. 703.20 (3) as it is in the draft. Right?

---

**From:** Selkowe, Vicky  
**Sent:** Tuesday, August 02, 2011 9:45 AM  
**To:** Kahler, Pam  
**Subject:** FW: Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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---

**From:** robbin vester [mailto:robbin2112@yahoo.com]  
**Sent:** Monday, August 01, 2011 2:04 PM

8/9/2011

**To:** Selkowe, Vicky; Joe Lourigan

**Subject:** Re: Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights

I just read the section that Pam was talking about that she changed in regards to the audit of records and I think what she has there gets at the issue.

---

**From:** "Selkowe, Vicky" <Vicky.Selkowe@legis.wisconsin.gov>

**To:** robbin vester <robbin2112@yahoo.com>; Joe Lourigan <joelourigan@gmail.com>

**Sent:** Mon, August 1, 2011 1:59:47 PM

**Subject:** FW: Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights

**Vicky Selkowe**

**Office of State Representative Cory Mason**

**62nd Assembly District**

State Capitol, Room 6 North

PO Box 8953, Madison, WI 53708

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---

**From:** Parisi, Lori

**Sent:** Tuesday, May 17, 2011 11:42 AM

**To:** Rep.Mason

**Subject:** Draft review: LRB 11-1916/P1 Topic: Condominium owners' bill of rights

**Following is the PDF version of draft LRB 11-1916/P1 and drafter's note.**

**Kahler, Pam**

---

**From:** Selkove, Vicky  
**Sent:** Thursday, August 04, 2011 3:17 PM  
**To:** Kahler, Pam  
**Subject:** RE: hold off on drafting the inspection related pieces

Pam,  
Use Florida's for the warranty. Use something simpler for the warranty than DC's language but it should retain the 10% language (bond or letter of credit shall be posted with the municipality in the amount of 10% of the estimated construction or conversion costs).

Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

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---

**From:** Kahler, Pam  
**Sent:** Thursday, August 04, 2011 12:28 PM  
**To:** Selkove, Vicky  
**Subject:** RE: hold off on drafting the inspection related pieces

Vicky:

That leaves the warranty/bond issue. Do you want to go with Florida's or DC's (or another state's) statute on the warranty? For the developer bond, do you want to go with DC's anyway or something else simpler?

---

**From:** Selkove, Vicky  
**Sent:** Thursday, August 04, 2011 11:04 AM  
**To:** Kahler, Pam  
**Cc:** Kite, Robin  
**Subject:** RE: hold off on drafting the inspection related pieces

Thanks. Robin, can you give me the citation for that requirement? Thanks!

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
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---

**From:** Kahler, Pam  
**Sent:** Thursday, August 04, 2011 9:42 AM  
**To:** Selkove, Vicky

**Cc:** Kite, Robin

**Subject:** RE: hold off on drafting the inspection related pieces

Ok, but FYI, Robin found that the administrative rules already require inspection reports to be filed permanently with the municipality. Robin said she called you and left a message to call her back on this issue - so no need to call her back. Thanks.

---

**From:** Selkove, Vicky  
**Sent:** Wednesday, August 03, 2011 5:14 PM  
**To:** Kahler, Pam  
**Subject:** hold off on drafting the inspection related pieces

Hi Pam -

We're going to shelve this piece of the bill related to requiring inspectors to inspect to ensure compliance with development agreements/plans and requiring inspection records to be placed on file with municipalities. Too complicated, too distracting from the main piece we're trying to get at.

Thanks. Sorry.

Vicky

**Vicky Selkove**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0062

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CR; 703.145

is part of a mixed use project, the cost of the residential condominium includes its pro rata share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section.

(f) As used in this section, the term "conveyance" shall mean the transfer of title by written instrument.

(g)(1) The Mayor shall issue proposed rules to implement the provisions of this section within 180 days of October 22, 1999. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.

Florida

(E)(1) Except as provided in division (E)(4) of this section, the developer shall furnish both of the following:

1. (a) A minimum of a <sup>3-year</sup> ~~two-year~~ warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the condominium property or additional property as a whole, occasioned or necessitated by a defect in material or workmanship;

2. (b) A <sup>3-year</sup> ~~one-year~~ warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to each unit occasioned or necessitated by a defect in material or workmanship.

(b)(2) The ~~two-year~~ warranty shall commence as follows: <sup>under par. (a) 1.</sup>

1. (a) For a condominium development other than an expandable condominium development, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the development to a purchaser in good faith for value;

2. a. (b)(i) For an expandable condominium development, for property submitted by the original declaration, on the date the deed or other evidence of ownership is filed for record following



the sale of the first condominium ownership interest in the property to a purchaser in good faith for value;

b. <sup>e</sup>(ii) For an expandable condominium development, for any additional property submitted by amendment to the declaration, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the additional property to a purchaser in good faith for value.

(c) <sup>e</sup>(3) The <sup>e</sup>one-year warranty <sup>→ under par. (a) 2.</sup> for each unit shall commence on the date the deed or other evidence of ownership is filed for record following the developer's sale and conveyance of the condominium ownership interest in the unit to a purchaser in good faith for value.

(d) <sup>e</sup>(4) The valid assignment by the developer of the express and implied warranty of the manufacturer satisfies the developer's obligation under this section with respect to ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances installed and furnished as part of the unit by the developer. The developer's warranty under <sup>par. (a)</sup> division (E)(1) of this section is limited to the installation of the appliances.

(e) <sup>e</sup>(5) All warranties made to the developer that exceed time periods specified in <sup>par. (a)</sup> division (E)(1) of this section with respect to any part of a unit shall be assigned to the purchaser of that unit and warranties with respect to any part of the common elements shall be assigned to the unit owners association.

Illinois

**C**

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 735. Civil Procedure

Act 5. Code of Civil Procedure (Refs & Annos)

▣ Article XIII. Limitations

▣ Part 2. Personal Actions

→ 5/13-214. Construction--Design management and supervision

§ 13-214. Construction--Design management and supervision. As used in this Section "person" means any individual, any business or legal entity, or any body politic.

(a) Actions based upon tort, contract or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission. Notwithstanding any other provision of law, contract actions against a surety on a payment or performance bond shall be commenced, if at all, within the same time limitation applicable to the bond principal.

(b) No action based upon tort, contract or otherwise may be brought against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission. However, any person who discovers such act or omission





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www.ncsl.org

**State Condominium Warranty Statutes**

May 07, 2011

703.145

Compiled by Doug Farquhar, J.D.

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**Totals:**

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District of Columbia Official Code 2001 Edition Currentness

Division VII. Property.

Title 42. Real Property. (Refs & Annos)

Subtitle III. Condominiums.

Chapter 19. Condominiums.

Subchapter III. Control and Governance of Condominiums.

→ § 42-1903.16. **Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.**

(B)

(1) (a) As used in this section, the term "structural defect" means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(B)

(2) (b) A declarant shall warrant against structural defects in each of the units for 2 years from the date each unit is first conveyed to a bona fide purchaser, and all of the common elements for 2 years. The 2 years shall begin as to any portion of the common elements whenever the portion has been completed or, if later:

(a) (1) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

(b) (2) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;





(C) (3) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

(d) (4) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

(3) (c) A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition. If the conversion **condominium** is offered in "as is" condition, the declarant's **warranty** against structural **defects** shall apply only to a **defect** in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

(4) (d) Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:

(a) (1) May be excluded or modified by agreement of the parties; and

(b) (2) Is excluded by an expression of disclaimer such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(5) (a) (e) (1) Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with the Mayor in the amount of 10% of the estimated construction or conversion costs, or shall provide any other form of security the Mayor shall approve to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this section. The other security may include a lien in favor of the Mayor against the declarant's equity in any unsold units, including any non-residential units, in which event the unsold units will be valued, for purposes of computing the declarant's equity, at 90% of the current listed sales price of the units, or if not listed, then the current listed sales price of comparable units in the condominium. The bond, letter of credit, or other security shall be reduced at the declarant's request in pro rata segments (based on the residential unit's percentage interest in the residential portion of the condominium) 2 years after the conveyance of each unit; provided, however, that in no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the condominium association to purchasing residential unit owners other than the declarant. For purposes of this subsection, "transfer of control" shall have occurred when 51% or more of the residential executive board is composed of residential unit owners other than the declarant, or successor declarant, or the declarant's selections or nominees. At the end of 5 years from the conveyance of the first residential unit to a purchaser, and provided one year has passed following transfer of control by the declarant, the declarant may sell unsold residential units as resale units, in which event no warranty against structural defects in the units under this section shall be required and the bond shall be reduced pro rata as to those unsold units. The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed use condominiums or mixed use projects. If residential condominium units are part of a mixed use condominium, the cost of the residential portion of the condominium shall include the residential condominium units' pro rata share of common elements, based on the residential condominium units' percentage interest in the common elements. If a residential condominium

is part of a mixed use project, the cost of the residential condominium includes its pro rata share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

- (b)(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section.

(f) As used in this section, the term "conveyance" shall mean the transfer of title by written instrument.

(g)(1) The Mayor shall issue proposed rules to implement the provisions of this section within 180 days of October 22, 1999. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.

Florida

(E)(1) Except as provided in division (E)(4) of this section, the developer shall furnish both of the following:

(a) A minimum of a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the condominium property or additional property as a whole, occasioned or necessitated by a defect in material or workmanship;

(b) A one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to each unit occasioned or necessitated by a defect in material or workmanship.

(2) The two-year warranty shall commence as follows:

(a) For a condominium development other than an expandable condominium development, on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the development to a purchaser in good faith for value;

(b)(i) For an expandable condominium development, for property submitted by the original declaration, on the date the deed or other evidence of ownership is filed for record following





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1916/R

PJK:amph

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

(in 8-9)  
by 8-29, please

✓ period for ~~expanding~~  
condominiums;  
community manager  
requirements;

regenerate ↓

✓  
1 AN ACT *to repeal* 703.15 (2) (c) 1. a.; *to consolidate, renumber and amend*  
2 703.115 (1) (intro.), (a), (b) and (c); *to amend* 703.07 (1), 703.115 (title), 703.115  
3 (2), 703.15 (2) (c) 1. b. and 703.20 (3); and *to create* 703.117 of the statutes;  
4 **relating to:** length of declarant control, requiring a written agreement  
5 between the declarant and the municipality, requiring approval by the  
6 municipality of condominium instruments, and requiring certification of  
7 condominium financial statements.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

8 SECTION 1. 703.07 (1) of the statutes is amended to read:  
9 703.07 (1) A condominium may only be created by recording condominium  
10 instruments that have been approved under s. 703.115 (1) with the register of deeds

✓ declarant warranties, and posting security;

Insert A

1 of the county where the property is located. A condominium declaration and plat  
2 shall be presented together to the register of deeds for recording.

3 **SECTION 2.** 703.115 (title) of the statutes is amended to read:

4 **703.115 (title) Local review and approval of condominium instruments.**

5 **SECTION 3.** 703.115 (1) (intro.), (a), (b) and (c) of the statutes are consolidated,  
6 renumbered 703.115 (1) and amended to read:

7 703.115 (1) ~~A county may adopt an ordinance to require the review of No~~  
8 ~~condominium instruments before recording~~ instrument may be recorded unless it  
9 has been reviewed and approved by persons employed by the county of recording or  
10 by a each city, village, or town that is in which the condominium is to be located in  
11 whole or in part in the county of recording if the ordinance does all of the following:  
12 (a) ~~Requires the.~~ The review to must be completed within 10 working days after  
13 submission of the condominium instrument ~~and provides that, if.~~ If the review is not  
14 completed within this period, the condominium instrument is approved for  
15 recording. (b) ~~Provides that a~~ A condominium instrument may be rejected only if  
16 it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c),  
17 and (d) and (3), 703.275 (5), and 703.28 (1m) or if the surveyor's certificate under s.  
18 703.11 (4) is not attached to or included in the condominium plat. (e) If the person  
19 performing the review approves the condominium instrument, ~~requires~~ the person  
20 to shall certify approval in writing, accompanied by his or her signature and title.

→ \*\*\*\*NOTE: If you wish, the review and approval could be done by the county, instead. →

21 **SECTION 4.** 703.115 (2) of the statutes is amended to read:

22 703.115 (2) ~~An ordinance adopted under this section~~ A city, village, or town  
23 performing a review under sub. (1) may ~~authorize the county to charge a fee that~~  
24 reflects the actual cost of performing the review.

Insert 2-24 ✓ →

1 SECTION 5. 703.117 of the statutes is created to read:

2 **703.117 Agreement between declarant and municipality.** (1) In this  
3 section, "municipality" means any city, village, or town.

4 (2) (a) Notwithstanding s. 703.27 (1), the declarant shall enter into a written  
5 agreement with each municipality in which the condominium is to be located in  
6 whole or in part. The agreement shall specify the rights, responsibilities,  
7 undertakings, and promises of each party with respect to the condominium  
8 development, including all of the following, as applicable:

- 9 1. Permit issuance.
- 10 2. Zoning approvals.
- 11 3. Fee payment.
- 12 4. Development plan, including all buildings and other structures, roadways,  
13 open space, parking facilities, and landscaping.
- 14 5. Utility and water and sewer specifications.
- 15 6. Completion schedule.
- 16 7. Fair market value guarantees. → *Subject to s. 703.14.*
- 17 8. Form and amount of any security required. (2),
- 18 9. Remedies in the event of default.

~~\*\*\*\*NOTE: I've listed a few items that were contained in the agreement you sent me.  
Do you want to include any other items specifically, not include a list of items at all, or  
provide me with a different list?~~

~~\*\*\*\*NOTE: Do you want the agreement to be entered into by any specific time, such  
as before the condominium instruments are recorded, before construction begins, before  
any units are sold, etc.?~~

19 (b) The agreement shall include provisions that do all of the following:

- 20 1. Authorize the municipality to inspect the condominium property during the  
21 construction process in accordance with the process established under sub. (3).

2. Authorize the condominium association that is established under s. 703.15 to enforce the agreement.

\*\*\*\*NOTE: Generally, only parties to an agreement have standing to bring an action for damages or to enforce the agreement. Therefore, it is highly unusual for a party that is not party to the agreement to be able to enforce the agreement. For that reason, I have made giving the association standing part of the agreement, itself, in addition to proposed sub. (4) below. It is even more unusual for the county District Attorney to pursue legal action in a matter between private parties based on a contract between the parties. DAs enforce statutes on behalf of the general public, not private contracts. See the duties of DAs in s. 978.05. Are you sure you want to authorize DAs to enforce these private agreements?

\*\*\*\*NOTE: You indicated that you want the association (and DA) to be able to "pursue actions against subcontractors in the same way that the local municipality does now." I'm unfamiliar with this, as are the attorneys who draft in the civil procedure and municipalities areas. Can you explain this further? Where does the municipality get the authority to sue subcontractors unless there is a contract between them?

(c) The declarant shall provide a copy of the signed agreement under this section to the condominium association when it is established under s. 703.15.

\*\*\*\*NOTE: Do you want the agreement to be recorded?

(3) Notwithstanding s. 703.27 (2), in addition to any other inspections that may be required under law for compliance with any state or local building code, the municipality shall establish a process for inspecting the condominium property during its construction to ensure that the condominium is being constructed in accordance with the agreement under this section.

Notwithstanding any other remedies provided for in the agreement, the condominium association established under s. 703.15 has standing to enforce the agreement.

SECTION 6. 703.15 (2) (c) 1. a. of the statutes is repealed.

SECTION 7. 703.15 (2) (c) 1. b. of the statutes is amended to read:

703.15 (2) (c) 1. b. Three years in the case of any other condominium.

\*\*\*\*NOTE: Do you want to restrict the time for expanding a condominium under s. 703.26 (2) (d) to three years also? yes

SECTION 8. 703.20 (3) of the statutes is amended to read:

Insert 4-12

Insert 4-15

1           703.20 (3) ~~DECLARANT RESPONSIBILITIES~~ RESPONSIBILITIES FOR RECORDS. During  
2           the period of declarant control under s. 703.15 (2) (c), the declarant is responsible for  
3           creating and maintaining the financial and operational records of the association  
4           and shall turn the records over to the directors elected under s. 703.15 (2) (f). During  
5           Annually during the period of declarant control under s. 703.15 (2) (c) and ~~for one~~  
6           each year thereafter, ~~upon written request to the association by the lesser of 3 unit~~  
7           ~~owners or the owners of 10% of the units, not including units owned by the declarant,~~  
8           the association shall arrange for an independent audit of its financial records by a  
9           certified public accountant at the association's expense. The cost of any additional  
10          audit requested ~~within 36 months after the completion of a previous audit by one or~~  
11          more unit owners shall be paid for by the requesting unit owner or owners.

12           **SECTION 9. Initial applicability.**

13           (1) The treatment of sections 703.07 (1), 703.115 (title), (1) (intro.), (a), (b), and  
14           (c), and (2), 703.117, and 703.15 (2) (c) 1. a. and b. of the statutes first applies to  
15           condominiums for which condominium instruments are first recorded on the  
16           effective date of the subsection.

17           **SECTION 10. Effective date.**

18           (1) This act takes effect on the first day of the 7th month beginning after  
19           publication.

20           **(END)**

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1916/P2ins  
PJK:.....

INSERT A

192

LPS  
inserts  
out of order

Current law contains provisions that regulate the establishment and operation of condominiums. A condominium is a form of property that includes separate units that are owned and occupied by separate owners and common elements that, generally, may be used by all unit owners and in which each unit owner has a specified ownership interest. A condominium is governed by an association of the unit owners with a board of directors elected by the unit owners. This bill makes a number of changes to the condominium laws, including the following:

1. Under current law, a county may adopt an ordinance that requires review by the county, or by a city, village, or town in the county, of condominium instruments before they are recorded. The bill eliminates the ordinance requirement and provides that condominium instruments may not be recorded unless they are reviewed and approved by each city, village, or town (municipality) in which the condominium is to be located.

2. The bill adds requirements for condominium declarants (the person who establishes the condominium). A declarant must enter into an agreement with each municipality in which the condominium is to be located that specifies the rights and responsibilities of the declarant and the municipality. The agreement must address zoning approvals, permit issuance, the completion schedule, and remedies in the event of default. The agreement must include fair market value guarantees, utility and water and sewer specifications, and a development plan with such details as buildings and other structures, roadways, open space, and parking facilities. The agreement must authorize the municipality to inspect the condominium development during construction and must authorize the condominium association to enforce the agreement. The bill also explicitly gives an association standing to enforce the agreement between the declarant and the municipality.

3. In addition to the agreement requirement, a declarant must provide a three-year warranty to each unit owner against defects in materials and workmanship in the unit, and a three-year warranty to the association against defects in materials and workmanship in the condominium outside of the units. Before conveying the first unit to a purchaser, the declarant must post a bond or letter of credit with each municipality with which the declarant has entered into an agreement. The amount of bond or letter of credit must equal ten percent of the estimated construction or conversion costs and be in favor of the municipality for the benefit of the association and any unit owner damaged by a defect in materials or workmanship.

4. Under current law, a condominium declaration may authorize the association to hire a manager to handle the day-to-day affairs of the condominium. The bill provides that any person hired by an association as a manager must be certified by the Certified Manager of Community Associations certification program and must post a bond in an amount specified by the association board.

5. Under current law, before the declarant turns over control of the condominium to the owner's association and for one year after that, the association must arrange for an independent audit of the condominium's financial records, at the

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*Insert A contd 282*

\* association's expense, upon the request of three<sup>✓</sup> unit owners or the owners of <sup>10</sup>ten percent of the units, whichever is less. Any request for an audit within three years after a previous audit must be paid for by the requesting unit owners. The bill requires the association to arrange for an independent audit by a certified public accountant annually, at the association's expenses, both during and after the declarant turns over control. Any additional audit must be paid for by the requesting owner or owners.

6. Under current law, the declarant may not have control over the association for more than three years, or for more than<sup>✓</sup> ten years if the condominium is expandable, meaning that the declaration allows more units to be added to the original plans by amendment to the declaration. Also, the declaration of a condominium may not allow the condominium to be expanded for a period exceeding ten years<sup>✓</sup>. The bill limits the period during which a condominium may expand to no more than three years and limits the maximum period of declarant control over the association of an expandable condominium to three years<sup>✓</sup>.

(END OF INSERT A)

INSERT 2-24

1           **SECTION 1.** 703.115 (3)<sup>✓</sup> of the statutes is created to read:  
2           703.115 (3) If a county has in effect on the effective date of this<sup>✓</sup> subsection ....  
3           [LRB inserts date]<sup>✓</sup>, an ordinance, rule, or resolution that is inconsistent with sub.<sup>✓</sup> (1),  
4           the ordinance, rule, or resolution does not apply and may not be enforced.<sup>✓</sup>

(END OF INSERT 2-24)

INSERT 4-15

5           **SECTION 2.** 703.15 (3m)<sup>✓</sup> of the statutes is created to read:  
6           703.15 (3m) **MANAGER QUALIFICATIONS AND REQUIREMENTS.**<sup>✓</sup> If the bylaws provide  
7           that the board may engage the services of a manager, any manager hired by the board  
8           must be certified by the Certified Manager of Community Associations<sup>✓</sup> certification



*Insert 4-15 contd 2 of 2*

1 program and shall be required to post a surety bond or provide other security  
2 specified by the board in the amount required by the board. ✓

(END OF INSERT 4-15)

**INSERT 5-11**

3 **SECTION 3.** 703.26 (2) (d) <sup>✓</sup> of the statutes is amended to read:  
4 703.26 (2) (d) In a declaration establishing a condominium, a right to expand  
5 the condominium may be reserved in the declaration for a period not exceeding 10  
6 <sup>✓</sup> 3 years from the date of recording of the declaration.

History: 1977 c. 407; 1997 a. 333.

(END OF INSERT 5-11)

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1916/FLAins  
PJK:...jf

INSERT 4-12

180.2

(B)  
Declarant ✓

SECTION 1. 703.145 of the statutes is created to read:

**703.145 Developer warranties; security.** (1) (a) Except as provided in par. (d), the declarant shall furnish both of the following:

1. A minimum of a 3-year warranty covering the full cost of labor and materials for the repair or replacement of roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the condominium property or additional property as a whole, that is occasioned or necessitated by a defect in materials or workmanship.

2. A 3-year warranty covering the full cost of labor and materials for the repair or replacement of structural, mechanical, and other elements pertaining to each unit that is occasioned or necessitated by a defect in materials or workmanship.

(b) The warranty under par. (a) 1. shall commence as follows:

1. For a condominium development other than an expandable condominium development, on the date <sup>on which</sup> the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the development to a purchaser in good faith for value.

2. a. For an expandable condominium development, for property included in the original declaration, on the date <sup>on which</sup> the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest in the property to a purchaser in good faith for value.

b. For an expandable condominium development, for any additional property added by amendment to the declaration, on the date <sup>on which</sup> the deed or other evidence of

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*Insert 4-12 cont'd 2002*

ownership is filed for record following the sale of the first condominium ownership interest in the additional property to a purchaser in good faith for value. ✓

3 (c) The warranty under par. (a) 2. ✓ for each unit ✓ shall commence on the date ✓ the deed or other evidence of ownership is filed for record following the declarant's sale and conveyance of the condominium ownership interest in the unit to a purchaser in good faith for value. ✓

7 (d) The valid assignment by the declarant of the express and implied warranty of the manufacturer satisfies the declarant's obligation under this section ✓ with respect to ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances installed and furnished as part of the unit by the declarant. The declarant's warranty under par. (a) ✓ is limited to the installation of the appliances.

13 (e) All warranties made to the declarant that exceed time periods specified in par. (a) ✓ with respect to any part of a unit shall be assigned to the purchaser of that unit, and warranties with respect to any part of the common elements shall be assigned to the association. ✓

17 (2) Before the declarant's first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with each municipality with which the declarant has entered into an agreement under s. 703.117 ✓ in the amount of 10% of the estimated construction or conversion costs of the condominium development.

21 The bond or letter of credit shall be in favor of the municipality for the benefit of the association ✓ and ✓ any unit owner damaged by a defect in materials or workmanship. ✓

*(end of insert 4-12)*

**Godwin, Gigi**

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**From:** Selkowe, Vicky  
**Sent:** Tuesday, September 06, 2011 4:32 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-1916/1 Topic: Condominium owners' bill of rights

Please Jacket LRB 11-1916/1 for the ASSEMBLY.

## Godwin, Gigi

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**From:** Selkowe, Vicky  
**Sent:** Tuesday, November 29, 2011 10:24 AM  
**To:** Godwin, Gigi  
**Subject:** RE: Draft Review: LRB 11-1916/1 Topic: Condominium owners' bill of rights

Apologies, Gigi! I put it away and forgot about it. ☺ Got it. Thank you.

**Vicky Selkowe**  
**Office of State Representative Cory Mason**  
**62nd Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
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**From:** Godwin, Gigi  
**Sent:** Tuesday, November 29, 2011 10:20 AM  
**To:** Selkowe, Vicky  
**Subject:** RE: Draft Review: LRB 11-1916/1 Topic: Condominium owners' bill of rights

Good morning, Vicky. LRB 11-1916/1 was jacketed on September 6, 2011. Did you office receive it? Please let me know.  
Thanks, Gigi

Gigi Godwin, Program Assistant  
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Gigi.Godwin@legis.wisconsin.gov

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**From:** Selkowe, Vicky  
**Sent:** Tuesday, November 29, 2011 10:15 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-1916/1 Topic: Condominium owners' bill of rights

Please Jacket LRB 11-1916/1 for the ASSEMBLY.